

State of Arizona  
Senate  
Forty-seventh Legislature  
Second Regular Session  
2006

# **SENATE BILL 1169**

AN ACT

AMENDING SECTION 38-797.07, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2       Section 1. Section 38-797.07, Arizona Revised Statutes, is amended to  
3 read:

4           38-797.07. LTD program benefits; limitations; definitions

5       A. The LTD program is subject to the following limitations:

6           1. Except as provided in paragraph 7 of this subsection, monthly  
7       benefits shall not exceed two-thirds of a member's monthly compensation at  
8       the time disability commences, reduced by:

9           (a) FOR A MEMBER WHOSE DISABILITY COMMENCED BEFORE JULY 1, 2006,  
10       sixty-four per cent of social security disability benefits that the member or  
11       the member's dependents are eligible to receive.

12           (b) FOR A MEMBER WHOSE DISABILITY COMMENCED ON OR AFTER JULY 1, 2006,  
13       ALL OF ANY SOCIAL SECURITY DISABILITY BENEFITS THAT THE MEMBER OR THE  
14       MEMBER'S DEPENDENTS ARE ELIGIBLE TO RECEIVE.

15           ~~(b)~~ (c) FOR A MEMBER WHOSE DISABILITY COMMENCED BEFORE JULY 1, 2006,  
16       eighty-three per cent of social security retirement benefits that the member  
17       is eligible to receive.

18           (d) FOR A MEMBER WHOSE DISABILITY COMMENCED ON OR AFTER JULY 1, 2006,  
19       ALL OF ANY SOCIAL SECURITY RETIREMENT BENEFITS THAT THE MEMBER IS ELIGIBLE TO  
20       RECEIVE.

21           ~~(e)~~ (e) All of any workers' compensation benefits.

22           ~~(d)~~ (f) All of any payments for a veteran's disability if both of the  
23       following apply:

24           (i) The veteran's disability payment is for the same condition or a  
25       condition related to the condition currently causing the member's total  
26       disability.

27           (ii) The veteran's disability is due to, or a result of, service in  
28       the armed forces of the United States.

29           ~~(e)~~ (g) All of any other benefits by reason of employment that are  
30       financed partly or wholly by an employer, including payments for sick leave.  
31       This subdivision does not include any retirement benefit that is received by  
32       the member pursuant to a state retirement system or plan other than ASRS.

33           ~~(f)~~ (h) Fifty per cent of any salary, wages, commissions or other  
34       employment related pay that the member receives or is entitled to receive  
35       from any gainful employment in which the member actually engages.

36           2. Monthly benefits are not payable until a member has been totally  
37       disabled for a period of six consecutive months.

38           3. Monthly benefits are not payable to a member who is receiving  
39       retirement benefits from ASRS.

40           4. Monthly benefits are not payable to a member whose disability is  
41       due to, or a result of, any of the following:

42           (a) An intentionally self-inflicted injury.

43           (b) War, whether declared or not.

44           (c) An injury incurred while engaged in a felonious criminal act or  
45       enterprise.

1           (d) An injury or sickness for which the member received medical  
2 treatment within ~~three~~ SIX months before the date of the member's coverage  
3 under the LTD program. This subdivision does not apply to a member who  
4 either:

5           (i) Has been an active member of an employer for twelve continuous  
6 months.

7           (ii) Is employed by an employer as of June 30, 1988.

8       5. Monthly benefits cease to be payable to a member at the earliest of  
9 the following:

10          (a) The date the member ceases to be totally disabled.

11          (b) The date the member:

12            (i) Ceases to be under the direct care of a doctor.

13            (ii) Refuses to undergo any medical examination or refuses to  
14 participate in any work rehabilitation program for which the member is  
15 reasonably qualified by education, training or experience and that is  
16 requested by the insurance company or claims administrator that is selected  
17 by the board to administer the LTD program.

18            (c) The date the member withdraws employee contributions with interest  
19 and ceases to be a member.

20            (d) The later of the following:

21            (i) The member's normal retirement date.

22            (ii) The month following sixty months of payments if disability occurs  
23 before sixty-five years of age.

24            (iii) The month following attainment of seventy years of age if  
25 disability occurs at sixty-five years of age or after but before sixty-nine  
26 years of age.

27            (iv) The month following twelve months of payments if disability  
28 occurs at or after sixty-nine years of age.

29            (e) If the member is convicted of a criminal offense and sentenced to  
30 more than six months in a jail, prison or other penal institution, the first  
31 day of the month following the first thirty continuous days of the member's  
32 confinement for the remainder of the confinement.

33       6. Monthly benefits are payable under the LTD program only for  
34 disabilities that commence on or after July 1, 1988.

35       7. The minimum benefit for a member who is entitled to receive  
36 benefits under the LTD program is fifty dollars per month.

37       8. Members are eligible to receive the benefits and payments described  
38 in paragraph 1 of this subsection, and the reductions provided by paragraph 1  
39 of this subsection apply even though the benefits are not actually paid as  
40 follows:

41           (a) For primary and dependent social security benefits, the members  
42 are eligible for the benefits until the benefits are actually awarded, or if  
43 the benefits are denied, until the member pursues the social security appeal  
44 process through a hearing before a social security administrative law judge

1 or until the insurance company or claims administrator determines that the  
2 member is not eligible for social security disability benefits.

3 (b) For benefits and payments from any other source provided in  
4 paragraph 1 of this subsection, the members are eligible for the benefits if  
5 it is reasonable to believe that the benefits will be paid on proper  
6 completion of the claim or would have been paid except for the failure of the  
7 member to pursue the claim in time.

8 9. A member shall be considered totally disabled if:

9 (a) During the first thirty months of a period of disability, the  
10 member is unable to perform all duties of the position held by the member  
11 when the member became totally disabled.

12 (b) For a member who has received monthly benefits for twenty-four  
13 months within a five-year period, the member is unable to perform any work  
14 for compensation or gain for which the member is reasonably qualified by  
15 education, training or experience in an amount at least equal to the  
16 scheduled benefits prescribed in paragraph 1 of this subsection.

17 B. A member who receives monthly benefits from the LTD program is  
18 entitled to receive service credit pursuant to article 2 of this chapter from  
19 the time disability commences until benefits cease to be payable, except that  
20 for a member who receives monthly benefits from the LTD program on or after  
21 June 30, 1999 the number of years of service credited to the member's  
22 retirement account during the period the member receives LTD benefit payments  
23 shall not cause the member's total credited service for retirement benefits  
24 to exceed the greater of thirty years or the total years of service credited  
25 to the member's retirement account on the commencement of disability.

26 C. This section does not prohibit a member whose disability has been  
27 established to the satisfaction of the board from relying on treatment by  
28 prayer through spiritual means in accordance with the tenets and practice of  
29 a recognized church, religious denomination or Native American traditional  
30 medicine by a duly accredited practitioner of the church, denomination or  
31 Native American traditional medicine without suffering reduction or  
32 suspension of the member's monthly benefits.

33 D. For the purposes of this section:

34 1. "Received medical treatment" means that the member consulted with  
35 or received the advice of a licensed medical or dental practitioner,  
36 including advice given during a routine examination, and it includes  
37 situations in which the member received medical or dental care, treatment or  
38 services, including the taking of drugs, medication, insulin or similar  
39 substances.

40 2. "Social security" and "social security disability" includes the  
41 railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States  
42 Code sections 231 through 231u).